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COMMISSION  
SECRETARIAT

In the Matter of

Kind for Congress Committee )  
and Mary JoAnn Werner )  
as treasurer )

MUR 4920

2000 OCT 31 A 9:51

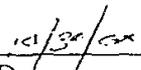
**STATEMENT FOR THE RECORD**

I wish to clarify my reasons for joining the statement of reasons in this matter.

There is no dispute that the Committee included the proper disclaimer when it first put up the sign at issue. Later the disclaimer was covered by graffiti, then removed in the course of cleaning the graffiti. I do not believe that strict liability can be imposed on a campaign where a third party defaces or removes a disclaimer. Thus, if pre-probable cause conciliation were not successful, in order for the Commission to find Probable Cause, the investigation would need to show that the campaign had control of the sign and knew, or should have known, of the problem, and failed to take prompt action to correct the problem. If this were shown, the Commission would then have to involve itself in an arcane judgment as to the promptness with which the campaign would be required to replace the disclaimer.

I have joined the Statement of Reasons in light of the above analysis, the likely amount of discovery and the difficult evidentiary burden that would result from pursuing the case, the small amount at stake, and the fact that this is unlikely to be a recurrent problem. I agree that prosecutorial discretion to close the file is appropriate.

  
\_\_\_\_\_  
Bradley A. Smith  
Commissioner

  
\_\_\_\_\_  
Date